

Minutes of: CALIFORNIA STATE ATHLETIC COMMISSION
Meeting Specifics: Regular Commission Meeting
October 4, 2003 – 10:00 a.m.
Embassy Suites – LAX North
9801 Airport Boulevard
Los Angeles, CA 90045
(310) 215-1000

1. CALL TO ORDER BY CHAIRMAN

Commissioners Present: Van Gordon Sauter, Chairman
Sanford Michelman, Vice-Chairman
Armando Vergara
Christopher Mears

Commissioner Absent: Gene Massey
John Frierson

Staff Present: Rob Lynch, Executive Officer
Dean Lohuis, Chief Athletic Inspector
Sal Barajas, Assistant Chief Athletic Inspector
Earl Plowman, Deputy Attorney General
Anita Scuri, DCA Legal Counsel
Jessica Finch, Recording Secretary

CLOSED SESSION

The Commission met in closed session pursuant to Government Code Section 11126 (a) (1) to consider complaints or charges brought against Commission employees.

(The items were heard in the following order: 1-2-5-5.1-7-8-14-10-13-16-17-18)

2. APPROVAL OF JUNE 13, 2003 AND AUGUST 14, 2003 COMMISSION MEETING MINUTES - ACTION

Action: Motion by Commissioner Mears and seconded by Vice-Chairman Michelman to approve meeting minutes as submitted.

Vote: Unanimous.

3. SUMMARY OF CHAIRMAN ACTIVITIES SINCE LAST MEETING

Chairman Sauter did not have any activities to report.

4. SUMMARY OF EXECUTIVE OFFICER ACTIVITIES SINCE LAST MEETING

Mr. Lynch did not have any activities to report.

5. BUDGET REPORT – INFORMATION / ACTION

Mr. Bill Young, Budget Officer from the Department of Consumer Affairs then addressed the Commission. He stated that he has provided the Commission with a handout that gives a brief summary of the total resources available to the Commission and additional data that will be pertinent.

Mr. Young noted the chart with a three year history of what the Commission's resources have been. He stated that for the fiscal year 2002 / 2003 the total amount authorized for the Commissions day to day operations is \$643,000. He explained that two years ago that amount was \$887,000 which equates to approximately a 28% reduction or \$244,000 less. He then stated that last years budget was \$682,000 and that amount was barely enough to survive. He further explained that last year was extremely tight and the Commission barely met the budget. Mr. Young then informed the Commission that this year it has an additional reduction of 6 –7 % or \$40,000. He then stated that an additional reduction \$48,000 - \$49,000 will be required from this years budget. He stated to the Commission that in other words, it meant that however tight last years budget was, this year is even more dire in that the Commission will be down approximately \$80,000 - \$100,000 from last year. He explained that this is not business as usual and that this is a critical budget.

Chairman Sauter asked if other budgets have been reduced proportionately to those of other organization within the Department of Consumer Affairs. Mr. Lynch stated that other budgets have not been affected as the Athletic Commission has because most other revenue producing boards are Special Fund and the Commission is Generally Fund. Mr. Young informed the Commission that it has taken approximately a 30% reduction over three years which can be directly attributed to the General Fund issues. He explained that the Commission is tied with the General Fund in that all of the revenue is given to the General Fund and expenditures are taken out of the General Fund. He further explained that when the Legislature is looking to bridge a gap in the budget, the first item considered is the General Fund agencies – cut and save. He stated that for Special Fund agencies it is slightly different in that the revenues are dedicated and paid by industry therefore there is more flexibility because the agency is not linked to the General Fund. He informed the Commission that the point is that there needs to be a very aggressive cost-saving measures and decisions that need to be made by this Commission in order to comply with this current years budget. He then informed the Commission that in the past, under normal circumstances, the Legislature has recognized that there are cost overruns. He explained that there is a Control Section 27 in the budget which basically states that if you are deficient in the operating budget by reasons out of the Commission's control, there is a process by which to resolve the deficit. Mr. Young noted that under normal circumstances that provision would be exercised but this year – that is not an option. He then directed the Commission's

attention to the Budget Letter 03-26 in which it states that cost override option / deficiency funding is not an option. He explained that with the unprecedented General Fund reductions it would not be considered and that management can be held personally liable to the extent that there are over expenditures. Mr. Young stated that is the reason he is present today and to advise the Commission that it must operate within the available resources only. He again implored the Commission that this year is extremely critical and that the same activities that occurred last year cannot be done this year for the simple fact that the Commission is operating with approximately 15% down from last year, and unfortunately Mr. Young stated he does not have any options for the Commission and added that additionally the consequences are there and it could lead to personal liability.

Mr. Young then advised the Commission that although this year is bleak, next year will be worse. He stated that the projections are \$8 - \$10 billion dollars down. He stated that due to this deficit, there have been directives by the Department of Finance for departments to consider looking at 20% reductions to what is already a reduced base. He explained that the 20% has been earmarked for General Fund agencies.

Vice-Chairman Michelman then asked what the approval process was for expenditures. Mr. Lynch replied that he approved the day to day expenditures and the Commission has very little discretionary costs that can be adjusted such as travel and inspector pay. Mr. Lynch continued that Mr. Young would agree that if the Commission stays on the course it is presently on that the Commission will run out of money before the end of the year.

Chairman Sauter then asked if this crisis would diminish the Commission's ability to convert to a Special Fund agency. Mr. Young stated it does not. He explained that the decision to convert to Special Fund is a policy issue. He noted that if the Commission believes that the current General Fund mechanism is not what the Commission desires, the Commission has the discretion to convert. Chairman Sauter asked how complex that process would be. Mr. Young stated that it would not be complex in that the Commission would be asking for a fundamental change in the Commission's funding source. Mr. Young stated that it would follow the budget change proposal process. Commissioner Mears asked how long the process would take. Mr. Young stated that it could be implemented by June 2004.

Chairman Sauter then asked how the budget is determined for a Special Fund agency. Mr. Young replied that the examination is (a) is the function performed, does it have a viable funding source and (b) is there a particular industry group that would provide the funds required. Chairman Sauter then asked if there may be a problem in that the Commission is currently generating \$800,000 for the General Fund and the General Fund is allocating \$580,000 then would the Special Fund be denied because it would cost the General Fund over \$200,000. Mr. Young replied that the net affect to the General Fund would be considered due to the current crisis. Commissioner Mears then asked if there were alternative funds available to the Commission to conduct its business through June of 2004. Mr. Young stated that there was not. Commissioner Mears then asked if the Commission has the authority to levy a special assessment against the licensees. Mr. Young replied that it does not. Chairman Sauter then asked what the per site cost was to conduct a single event. He then asked where the staff salaries fall. Chairman Sauter then reiterated to Mr. Young that what he is essentially informing the

Commission is that the Commission is not going to have enough money to facilitate conducting events through the end of the fiscal year. Mr. Young agreed.

Vice-Chairman Michelman stated that he would like staff to prepare a budget through the fiscal year end to make sure the Commission stays within the guidelines set forth. Commissioner Sauter then asked how this could be accomplished. Mr. Young informed the Commission that the fixed expenditures are essentially the staff salaries, benefits, overhead (ie. rent, utilities and telephone) which is about 85% of the entire budget and the discretionary costs are approximately 15% of the Commission's budget which consists of items such as inspector pay and travel. Chairman Sauter stated he would like to take the budget, divide it by the number of events conducted and find out exactly what the per event cost is and of that cost to again divide it up into specific categories (salary, overhead, travel, etc.). Vice-Chairman Michelman then stated that it would be impossible to eliminate 15% of the budget by eliminating the discretionary costs because those costs are necessary to facilitate events.

Commissioner Mears then asked if the Commission is going to have an appropriation shortfall of 15-20% this current year. Mr. Young stated that is correct, approximately \$50,000. Commissioner Mears then asked if he understood correctly that the Commission must eliminate \$50,000 from its spending by June of 2004. Mr. Young stated that is also correct. Mr. Young stated that the \$50,000 that the Commission must reduce has been targeted through personal service reduction cut, which in essence is a staff lay-off. He added that there is a directive that states that the budget will be reduced by all state agencies by \$1.1 billion and 16,000 positions. He explained that the amount that is in the fixed expenses (salaries) will bear a portion of the reductions, possibly all of the 15%. Commissioner Mears then asked if the salaried staff could accept a temporary salary reduction. Mr. Young stated that is not available due to civil service contracts. Mr. Young added that the collective bargaining units already agreed to forego a 5% pay increase to help with the budget. He stated that bluntly, the Commission must lay off personnel. Commissioner Mears then asked that if the person scheduled to be laid off could work through the end of the fiscal year voluntarily and return for the next fiscal year and be reimbursed for their salary at that time when the Commission has more money through Special Fund. Mr. Young replied that this was not an option. He explained that once an employee is laid off, they have no return right and the Commission loses the position. Commissioner Mears then asked if the licensees wanted to cover the budget shortfall, would that be permitted. Ms. Scuri stated that anyone could make a gift of money or property. She informed the Commission that it would have to go to the Department of Finance for approval. She further explained that if it would be approved and the Commission was a Special Fund, it would take Legislative approval to use the funds. Chairman Sauter stated that he has concerns in asking the persons whom the Commission regulates to contribute. Commissioner Mears agreed, but stated that his concern is with staff lay-offs. Vice-Chairman Michelman stated that his concern is that with the 15% reduction request, that the discretionary expenses cannot be cut so his belief is that the Commission is literally in a no win situation. Mr. Young reiterated that the reduction will be done through a reduction from the fixed expenses which translates to wages for staff. Vice-Chairman Michelman stated that it is his understanding that even if the Commission were to shut down, the expenses would still be spent. He further stated that he personally takes issue with the budget office informing the Commissioners that essentially they will be required to refund the State because the budget office failed in their duties. Mr. Young replied that that is not the

scenario. He informed the Commission that the Commission is only a quarter into this fiscal year and if the cuts are done in the very near future then the budget can be met. He further informed the Commission that the reduction of \$49,000 will be deducted from salaries (fixed expenses). Mr. Young then stated that the reductions were to be implemented as of July 1, 2003 but were not implemented. In other words, the reduction of salaries has not taken effect and are currently being paid so an adjustment must be made accordingly. Mr. Young stated that the amount of difference could be reduced from the discretionary expenses. He stated that the Commission does have time to make the decisions but the decisions should be made as soon as possible.

Ms. Scuri then informed the Commission to take under consideration that championship or prize fighting in the State of California under the penal code, is a crime if not regulated by the Commission. She explained that it differentiates from other boards or bureaus in that there are licensees livelihood depends on the Commissions continued functioning.

Mr. Chuck Hassett then asked if the Commission could contract out the functions the Commission does. Mr. Plowman responded that the Commission could not contract out their services in that manner. Mr. Lou Moret stated that he agrees with the Commission being Special Fund and implored the Commissioners to utilize any connections they may have with the Legislature to accomplish that goal.

Mr. Young reiterated that the situation is grim and that the Commission must live within the resources available and be accountable and responsible to the industry it represents. Chairman Sauter again stated that he would like a "per unit" cost in order to make an informed decision. Vice-Chairman Michelman then asked for a line item of all expenses with a very detailed break down. Mr. Young explained that the Department is currently working on a per unit costs but it is not complete and will report back to the Commission. Chairman Sauter asked Mr. Young to submit a preliminary report for his review. Vice-Chairman Michelman added that when the per event cost is done, to break it down further in costs either fixed or discretionary.

Mr. Lohuis informed the Commission that approximately ten years ago a cost per event was done and it was determined that the cost was approximately \$1,500. He stated that this was the information used when the assessment was determined for Indian reservations.

Action: Motion by Commissioner Mears and seconded by Commissioner Vergara for the Commissioners to forego the per diem allocation for themselves if the Commissioners wish to do so as an individual decision.

Vote: Unanimous.

5.1 PROPOSAL TO CONVERT FUNDING FROM GENERAL FUND TO SPECIAL FUND

Ms. Scuri asked Mr. Young if the Department would support the Commission's conversion to a Special Fund. Mr. Young stated that it is the Department's intent is to provide the Commission with whatever the Commission deems is necessary in the budget year including conversion.

Vice-Chairman Michelman stated that he is in support of Special Fund. Commissioner Mears added that it would allow the Commissions fee-fine structure to be more sensitive to the Commissions budget needs.

Action: Motion by Vice-Chairman Michelman and seconded by Commissioner Mears to pursue the appropriate avenue to convert the Commission from General Fund to Special Fund.
Vote: Unanimous.

6. REGULATION HEARING – RULE 352 – BOXERS KNOCKED OUT - ACTION

This item was not heard.

7. PROFESSIONAL / AMATEUR BOXER / MARTIAL ARTS FIGHTER MEDICAL INSURANCE

Mr. Lynch informed the Commission that at the August 14, 2003 Commission meeting, the Commission acting as a Sub-Committee recommended that the medical insurance for all boxers and martial arts fighters both amateur and professional be raised from the current \$20,000 to \$50,000. This will become effective January 1, 2004. He stated that staff is asking the Commission as a quorum to approve this recommendation.

7.1 APPROVAL OF SUB-COMMITTEE RECOMMENDATION - ACTION

Action: Motion by Commissioner Mears and seconded by Commissioner Vergara to raise the medical insurance requirement for all boxers and martial arts fighters both amateur and professional from \$20,000 to \$50,000 to become effective as of January 1, 2004.
Vote: Unanimous.

8. REQUEST FOR LUMP SUM DISTRIBUTION OF PENSION BENEFITS – MEDICAL DISABILITY - ACTION

8.1 GENARO HERNANDEZ – PROFESSIONAL BOXER

Mr. Lynch informed the Commission that Mr. Genaro Hernandez is requesting a lump sum distribution of his pension benefits pursuant to Business and Professions Code Section 18887 and Rule 406 (d) (3) for disability retirement. He explained Mr. Hernandez has been under the care of Simon C. Solis, M.D. in Los Angeles, California since November 2, 1998. In Dr. Solis' letter dated July 11, 2003, he states that Mr. Hernandez suffers from a Subacute Cerebral Hemorrhage involving Optic Chiasm, left frontal, left basal ganglion and left parietal regions. Dr. Solis' letter stated that Mr. Hernandez should retire from his boxing career.

Mr. Lynch stated that Mr. Hernandez is now 37 years old. Pursuant to Business and Professions Code Section 18887, the Commission may award a lump sum distribution to a professional boxer in lieu of a pension. Mr. Hernandez is entitled to approximately \$17,510 in benefits.

Mr. Lynch then stated that it was the staff recommendation that Mr. Hernandez be granted his lump sum distribution due to his medical disability. He added that if approved the request for distribution would be processed immediately.

Mr. Lohuis informed the Commission that Mr. Hernandez is a fully employed individual who is employed by ESPN as a “punch counter” on CompuBox. Mr. Lohuis explained that in a conversation with Mr. Hernandez, it is Mr. Hernandez’ concern that since his investment has lost revenue in the past few years, it is Mr. Hernandez’ belief that he could invest the funds for a larger revenue himself. Mr. Lohuis stated that the request is for disability, not to enable Mr. Hernandez to invest in what Mr. Hernandez would believe to be a more viable avenue.

Commissioner Mears then asked which “staff” exactly is making this recommendation in light of these facts. Mr. Lynch replied that the staff person who made this recommendation was utilizing the physicians recommendation.

Mr. Plowman stated that the letter dated July 11, 2003 from Dr. Solis states that it is his opinion that Mr. Hernandez is unable to continue his boxing career not that Mr. Hernandez is disabled.

Mr. Barajas added that he had spoken with Mr. Hernandez a few weeks prior and Mr. Hernandez seemed to be in full control of his faculties and had mentioned the situation of his pension losing money.

Chairman Sauter then asked counsel under what circumstances can the Commission make the distribution. Ms. Scuri replied that under Rule 406 (d) it permits a covered boxer, for good cause shown, to petition the Commission in writing to receive a different method of payment, one being a lump sum distribution. She explained that good cause is defined as “ a covered boxer’s terminal illness or disability retirement” or the situation where it is objectively and prudent to purchase an annuity contract.

Vice-Chairman Michelman stated that he would like a report on the process for a staff recommendation and whom is making the recommendation. He added that he would like to see at least two relevant staff members agree on the recommendation before it is made to the Commission.

Action: Motion by Chairman Sauter and seconded by Commissioner Mears to deny Mr. Hernandez’ request for lump sum distribution for disability retirement.
Vote: Unanimous.

9. AMATEUR MARTIAL ARTS INFECTIOUS DISEASE TESTING / PROPOSED LEGISLATION – INFORMATION / ACTION

This item was not heard.

10. COMMISSION RULES 217 & 218 – WRITTEN EXAMINATION AS CONDITION OF LICENSURE – MATCHMAKER / MANAGER / SECOND / TIMEKEEPER – INFORMATION / ACTION

Mr. Lynch informed the Commission Rules 217 & 218 require that all original applicants for licensure as a matchmaker, manager, second and timekeeper pass a written examination administered by the Commission. Ms. Scuri and Mr. Lynch met with Tracey Farrell, Chief of the Examination Resources Office. Dr. Farrell was interested in completing an occupational analysis of the Commission's examination process. Mr. Lynch informed Dr. Farrell that the Commission had not administered these written examinations as long as he had been with the Commission (1982) and it was suggested that the regulations be amended to delete these requirements. Mr. Lynch explained that it is not practical for staff to administer written examinations due to staffing concerns and the fact that many of the original applications are received at a weigh-in and many weigh-ins are complicated as is.

Mr. Lynch stated that staff is recommending that the regulations be repealed.

Vice-Chairman Michelman then stated that he had some concern is amending Rule 218 in that once lost, it may be difficult to regain. Ms. Scuri replied that there is a problem with the Commission having a regulation that the Commission is not adhering to. She explained that to have occupational analysis is time consuming and very expensive proposition. She further explained that the Commission would be better to remove the regulation as condition of licensure rather than not enforce the regulation. She went on to say that Dr. Farrell is the head of the Office of Exam Resources within the Department of Consumer Affairs and there are questions as to validity of the requirement and the issue of the Commission not enforcing the regulation.

Action: Motion by Commissioner Mears and seconded by Vice-Chairman Michelman to repeal Rule 217 and amend Rule 218 to delete the examination requirement.

Vote: Unanimous.

11. SUSPENSIONS – KNOCKOUT / TECHNICAL KNOCKOUT / HARD FIGHT – INFORMATION / ACTION

This item was not heard.

12. SUNSET REVIEW - INFORMATION

This item was not heard.

13. REFEREE EVALUATIONS & CALIFORNIA STATE TITLES – INFORMATION

/ ACTION

Mr. Lynch asked Mr. Lohuis to explain the California State Title process. Mr. Lohuis stated that the due to the increased workload of all staff the ranking of the California State Titles have not been done in some time. Chairman Sauter then asked if promoters have been allowed to advertise a bout for a State title. Mr. Lohuis stated that yes it is being done. He explained that instead of a committee approving State Title bouts, Mr. Lohuis has been approving the titles himself. Mr. Martin Denkin, representing the Referees Association, stated that he would like to apologize to the Commission and Mr. Lohuis for his behavior at the last Commission meeting and would like to apologize for personally attacking Mr. Lohuis. He explained that previously a committee was appointed to oversee the State Title bouts to control the integrity of the fights. He further explained that the Committee members have found it insulting that the State Title bouts have been occurring without any consultation with the Committee. He suggested that the Commission either utilize the Committee or abolish the Committee. Mr. Englebrecht informed the Commission that as a promoter, he personally has enough faith in Mr. Lohuis to make an appropriate decision as to allow the bout or not and feels that the Committee served its purpose in establishing the criteria and now is no longer necessary. Vice-Chairman Michelman stated that it is his belief that the Committee facilitated its purpose. Chairman Sauter then asked Mr. Lohuis if he felt he was complying with the intent of the Committee when approving the bouts. Mr. Lohuis replied that he believes he is. He added that it is a regulation that the Commission has California ratings.

Action: No action was taken.

14. EVENT CANCELLATIONS – INFORMATION / ACTION

14.1 OFFICIALS' COMPENSATION

Mr. Lynch informed the Commission that periodically boxing events are cancelled through no fault of the promoter, by staff. He stated that recently three events have been cancelled when there were no paramedics with the ambulance crew and staff have had instances where outdoor events have been cancelled due to weather problems. He explained that when an event is cancelled the fans are given full ticket refunds but the boxers and officials are paid nothing. He did note that at the event where the weather induced the cancellation, the officials were paid by the venue but not by the promoter.

He went on to state that at events which do take place if a boxer signs a contract and is ready to fight but his opponent falls out for some reason, the willing and able boxer is not paid his full purse but instead reimbursed for reasonable expenses. This has been a Commission policy for several years. The Commission may wish to consider this policy in regard to officials when events are cancelled.

Chairman Sauter stated that he had concerns as to the cancellations due to an ambulance being available but without a paramedic. Ms. Scuri stated that the

Rule has created a problem. She explained that the Rule requirement cannot be met in some jurisdictions. Commissioner Mears stated that at one of the events in which he attended along with Commissioner Frierson, the situation was this: the participants were poised to begin, the television studios were poised to begin filming and there were no paramedics on the scene. He explained that the event began with the paramedics on scene but before they actually entered the building. He stated that ringside physician indemnity is at the core of this requirement. He further explained that with an ambulance with means to transport an injured participant if need be, and two ringside physicians on the scene, which he feels the physicians are more capable than a paramedic in dealing with any medical emergency which may occur, the need for a paramedic may be unnecessary. He further explained that the physician may be compromised if the physician allows a bout to begin and the participant is injured without an ambulance on scene the physician is standing with no indemnification by the State. Commissioner Mears stated that with many of these venues so close to a hospital and the fact that ambulances are available, the need for a paramedic is overkill.

Ms. Scuri suggested that Rule 294 be revisited for the Commission to reconsider. Chairman Sauter stated that those two items will be discussed at the next Commission meeting.

Mr. Englebrecht suggested that if the cancellation is the fault of the promoter, the promoter should be required to pay all parties, participants and officials the full amount. Vice-Chairman Michelman suggested that if it is the fault of the venue, then perhaps the contract could contain a provision that the venue would be responsible for payment. Commissioner Mears stated that core of this issue is bureaucracy over discretion – fighter safety. He explained that having paramedics on scene is a good idea which is indisputable, however in the case of an emergency medical context which rarely occurs or only occurs in a distance from a hospital situation. Mr. Lohuis stated that in thirty years, only twice has a paramedic been utilized. Commissioner Mears then stated that it is his belief that it should be at the ringside physicians discretion to make the decision as to whether or not the fight can begin with ambulance without paramedic on scene in light of the physicians own abilities to deal with a medical emergency, the proximity of a hospital/trauma center. He further informed the Commission that this should not be done if the physician does not have State indemnity. Ms. Scuri informed the Commission that Rule 294 could be revised if they decided to go that route. Commissioner Mears stated that no matter whose fault it is, when an event fails to go forth, it is the Commission who the public blames.

Chairman Sauter then asked Mr. Lohuis to provide information on what other sports do in this case. Mr. Lohuis replied that he would.

14.2 PROMOTER CONSEQUENCES

Mr. Lynch stated that if events are cancelled and it is the fault of the promoter, they may be fined, have their license suspended and be ordered to appear before the Commission. Currently the Commission has no policy in place in regard to promoters if an event is cancelled through no fault of the promoter. The Commission may wish to consider some sort of promoter sanctions in these types of event cancellations.

15. COMMITTEE REPORTS – INFORMATION / ACTION

15.1 ARBITRATION COMMITTEE REPORT

This item was not heard.

15.2 PENSION PLAN REVIEW COMMITTEE REPORT

This item was not heard.

15.3 MEDICAL AND SAFETY STANDARDS ADVISORY COMMITTEE REPORT

This item was not heard.

15.3.1 RINGSIDE PHYSICIAN PAY

This item was not heard.

15.4 OFFICIALS COMMITTEE REPORT

This item was not heard.

15.5 AMATEUR BOXING COMMITTEE REPORT

This item was not heard.

16. AGENDA ITEMS FOR FUTURE MEETINGS

- State Indemnification of Ringside Physicians
- Rule 294
- Officials Compensation – event cancellations
- Appointment of Chairman and Vice-Chairman of the Commission

17. COMMISSIONERS' COMMENTS AND/OR RECOMMENDATIONS

Chairman Sauter took that time to welcome Commissioner Vergara back from surgery.

The Commission agreed that the next Commission meeting will be held on November 7, 2003 at a venue to be determined.

18. PUBLIC COMMENT ON MATTERS NOT ON THE AGENDA

Mr. Englebrecht informed the Commission that according to California Penal Code Section 310 states that it is a misdemeanor for a promoter allows a person under 16 years of age admission, or allows that person to purchase to a cock fight or prize fight. He emphasized that this law needs to be repealed or amended.

The meeting was then adjourned.

The draft minutes were prepared by: Jessica Finch

The final minutes were prepared by: